

RATTET, PLLC
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

HEARING DATE: TBD

Attorneys for (Involuntary) Debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
	:	
In re	:	Chapter 7
	:	
EMC Bronxville Metropolitan LLC,	:	Case No.: 18-22963-rdd
	:	
	:	
Debtor.	:	
-----	x	

**DEBTOR’S MOTION FOR AN ORDER, PURSUANT TO 11
U.S.C. § 706(a) AND RULE 1017(f) OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE CONVERTING
THIS CHAPTER 7 CASE TO A CASE UNDER CHAPTER 11**

**TO: HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE**

EMC Bronxville Metropolitan LLC, the above-captioned debtor (the “Debtor”), by its counsel, Rattet PLLC, as and for its motion the “Motion”), pursuant to section § 706(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 1017(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order converting this chapter 7 case to a case under chapter 11 of the Bankruptcy Code, respectfully represents as follows:

BACKGROUND

1. On or about June 22, 2018 (the “Petition Date”) Petitioning Creditors Thomas E Haynes Architect, Werner E. Tietjen, PE, and Hall Heating & Cooling Service Inc., (collectively, “Petitioning Creditors”) filed an Involuntary Petition for relief under Chapter 7 of the Bankruptcy Code (the “Petition”) (ECF Docket No. 1) against the Debtor.

2. The time to respond to the Involuntary Petition, according to this Court’s docket, is July 30, 2018.

3. No order of relief has been entered.

RELIEF REQUESTED

4. By this Motion, the Debtor requests entry of an order, substantially in the form annexed hereto as Exhibit “A”, converting this chapter 7 case to one under chapter 11 pursuant to 11 U.S.C. § 706(a).

5. Section 706(a) provides, in pertinent part, that a “debtor may convert a case under this chapter to a case under chapter 11 ... of this title at any time, if the case has not been converted under section 1112, 1208 or 1307 of this title.” (11 U.S.C. § 706(a)).

6. This case was commenced as an involuntary chapter 7 case and no prior conversions pursuant to sections 1112, 1208 or 1307 of the Bankruptcy Code have been sought or ordered.

7. The legislative history of section 706(a) evidences that Congress intended that the debtor be provided “...one absolute right of conversion of a liquidation case to reorganization...” H.R. Rep. No. 95-595 at 380 (1977).

8. The Debtor is eligible to be a debtor under chapter 11 of the Bankruptcy Code and desires conversion of this case to one under chapter 11.

9. The Debtor wishes to preserve its right to damages under 11 U.S.C. §303(i).

10. The havoc and administrative expense created by the filing was unnecessary.

11. The filing, however, has caused significant disruption and reorganization is now necessary.

12. Thus, the Debtor seeks relief under 11 U.S.C. §303(i) against Petitioning Creditors and others.

RELIEF SOUGHT

13. Section 706(a) of the Bankruptcy Code does not require notice and a hearing of a debtor's motion to convert its chapter 7 case to one under chapter 11 of the Bankruptcy Code.¹

14. Rule 1017(f)(2) of the Bankruptcy Rules provides, *inter alia*, that conversion under section 706(a) "shall be on motion filed and served as required by Rule 9013." In contrast to Rule 9014, Rule 9013 does not require a hearing. Thus, the Debtor meets the statutory criteria under section 706(a) for conversion without notice.

15. The Debtor respectfully submits that notice of this Motion, other than that provided by filing on the Court's ECF system is required.

¹ Compare with 11 U.S.C. § 706(b) which expressly mandates notice and a hearing where the request to convert a case to one under chapter 11 is made by a party in interest rather than a debtor.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form annexed hereto as Exhibit "A", converting the above-captioned chapter 7 case to a case under chapter 11 and for such other and further relief as this Court deems just and proper.

Dated: July 15, 2018
White Plains, New York

RATTET, PLLC
Attorneys for Involuntary Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
Telephone: (914) 381-7400

BY: /s/ Robert L. Rattet
Robert L. Rattet

EMC Bronxville Metropolitan LLC

/s/Edgar Costa
BY: _____
EDGAR COSTA

EXHIBIT “A” – PROPOSED ORDER